

Powhatan Mining Company Site
2006 Emmanuel Court
Woodlawn, Maryland

Baltimore County Zoning Variance Hearing
November 3, 2010 @ 2:00 pm

Petitioner's Burden to Satisfy Hearing Officer
(prepared by Jack Kelly, EPA Region III - 215-514-6792, kelly.jack@epa.gov)

(A) First Step - The property where the new garage is proposed to be placed is "unique, unusual or different" in that it is the site of a former asbestos processing facility operated by the Powhatan Mining Company from about 1917 to 1980. The former processing building is contaminated with asbestos and portions of the surrounding grounds and adjacent property grounds are also contaminated. The owner was willed the property by his father who bought it in 1985 from the trustee assigned by the Circuit Court of Baltimore County to sell the real estate of the former Powhatan Mining Company.

In 2009, EPA was requested by the State of Maryland to conduct a Superfund removal action to clean up the facility and grounds (Superfund = Comprehensive Environmental Response Compensation and Liability Act). As the On Scene Coordinator for the project, I proposed cleanup and demolition of the former processing facility and this decision was concurred on by EPA management in an Action Memorandum dated June 2010. Part of the building, mainly the cement block garage-like portion, is used by the current owner to store personal materials. In accordance with EPA's Guidance on Compensation for Property Loss in Removal Actions, September 1995, I've concluded that construction of a building similar in size to this cement block portion is appropriate to compensate the property owner. EPA management agreed to this by concurring on a document titled Headquarters Consultation Memorandum for Demolition/Compensation Proposal in June 2010.

(B) Second Step –

(1) Undue Hardship for Use Variance

The owner is not proposing any changes in building use. He works on his personal cars in the existing cement block building and stores personal items. He would continue to do so. The existing building has a car lift and EPA proposes to move the lift and place into the new building in a functioning manner. The owner does not use the building for commercial purposes since, after his father purchased the property in 1985, the family was surprised to learn that a non-conforming use status would have been necessary to conduct commercial auto repair operations. His father apparently did not understand that the property's former use as an industrial operation and industrial taxation for several years following purchase did not automatically give a green light to perform commercial activities.

Cars and automotive repair work are the owner's passion having been a mechanic for many years before medical disabilities required that he end full-time mechanic work. Cleanup and demolition of the former facility, including the cement block portion, is not a result of the owner's own actions. EPA has initiated this action through the Superfund law.

(2) Practical Difficulty for an Area Variance –

The property owner stores most of his personal items (cars, auto repair equipment, furniture, other) in the cement block portion of the former processing facility. Some materials are stored in the sheet metal portion of the former plant. He covets these personal items. Failure to build a suitable structure to house the objects after cleaning and facility demolition would require their placement on exterior property grounds, storage at a remote location or disposal. The property owner is on a limited fixed income and he could not afford off-site storage of his possessions after EPA's cleanup work is complete. Exterior placement is unreasonable and potentially adverse to County regulations.

The new garage building will be of new construction and arguably more visually pleasing than the current structure. The proposed location is further removed from the line of sight for the majority of neighboring residents, those along Kincheloe Avenue. Owners of the adjoining properties where the new structure would be closest (Emmanuel Church and a home on Wells Manor Avenue) have orally indicated that they are not opposed to the new building and placement at the proposed location.

(C) No increase in residential density will occur as a result of this action.

(D) The relief requested apparently will result in a new building higher than normally accepted by the County unless it were to be attached to the existing owner's home. Attaching it to the current residence via a breezeway would be impractical given the design characteristics of the house. In addition, there are impracticalities in trying to place the new garage within 20 feet of the residence given the sloping nature of the grounds and asbestos soil contamination. It is significant to note that EPA will be removing an existing facility that is upwards of 50 feet high at its peak.

(E) The larger action being taken by EPA to clean up and remove the former facility and excavate and/or cover contaminated soils will serve to protect public health, prevent injury, and should ultimately enhance adjoining property values.